

**UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

CHARLIE THORNTON,)
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)
)
Plaintiff,)
)
v.) Civil Action No. 2:05-cv-00656-DRB
)
FEDEX GROUND PACKAGE SYSTEM, INC.)
)
)
Defendant.)
)

**MOTION FOR LEAVE TO AMEND ANSWER OF DEFENDANT FEDEX GROUND
PACKAGE SYSTEM, INC. TO PLAINTIFF'S AMENDED COMPLAINT**

FedEx Ground Package System, Inc. (“FedEx Ground”) hereby moves this Court for leave to amend its answer to the Plaintiff’s Amended Complaint to assert Alabama’s statute of frauds, Ala. Code § 8-9-2, as an additional affirmative defense. FedEx’s proposed First Amended Answer is attached hereto as Exhibit A.

The First Amended Complaint is identical in all respects to FedEx Ground’s original Answer, except for the addition of the statute of frauds as an affirmative defense. Discovery has just commenced in this case, and the statute of frauds has been implicated in the course of that discovery. Specifically, the statute of frauds was implicated in tape recordings that FedEx Ground received from the Plaintiff as part of his Rule 26(a)(1) initial disclosures in November 2005—after the Court’s November 1, 2005, cutoff for amending pleadings as of right. In those tape recordings, the Plaintiff indicated that he sought a two-year contract with FedEx Ground. Because the statute of frauds bars enforcement of any oral contract that is not to be performed

within one year, Ala. Code § 8-9-2(1), FedEx Ground now seeks to raise the statute of frauds as an affirmative defense to the claims asserted in the Plaintiff's Amended Complaint.

Under Rule 15(a), leave to amend to plead an affirmative defense should be granted "freely . . . when justice so requires." Moreover, "[i]n the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be freely given." *Foman v. Davis*, 371 U.S. 178, 182 (1962) (quotation omitted). Finally, "[the Eleventh] Circuit has accepted a policy of liberal amendment." *United States v. Aetna Ins. Co.*, 831 F.2d 978, 983 (11th Cir. 1987).

For these reasons, FedEx Ground requests that the Court grant its motion for leave to amend its answer to Plaintiff's Amended Complaint.

DATED: January 13, 2006

/s John R. Parker, Jr.

John R. Parker, Jr. (PAR 123)

SPOTSWOOD LLC

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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2006, I electronically filed the foregoing MOTION FOR LEAVE TO AMEND ANSWER OF DEFENDANT FEDEX GROUND PACKAGE SYSTEM, INC. TO PLAINTIFF'S AMENDED COMPLAINT with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following counsel of record for the Plaintiff:

K. Anderson Nelms, Esq.
P.O. Box 5059
Montgomery, AL 36103

DATED: January 13, 2006

/s John R. Parker, Jr.
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